



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 21 2013

Uniform Issue List: 402.00-00

TEP:RAIT

Legend:

Taxpayer A	=
Company B	=
Plan C	=
Financial Institution D	=
IRA E	=
Amount 1	=
Amount 2	=
Amount 3	=

Dear:

This letter is in response to your request for a private letter ruling dated June 6, 2013 and supplemented by letter dated September 25, 2013, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

On December 14, 2012, Plan C treated Amount 2 as a distribution to Taxpayer A. Taxpayer A represents that his failure to accomplish a rollover of Amount 2 from Plan C within the 60-day period prescribed by section 402(c)(3) of the Code was due to his reliance on statements by Financial Institution D, the service provider for Plan C, which failed to inform him that he had received an eligible rollover distribution.

Taxpayer A represents that he became an employee of Company B on January 1, 2005 and enrolled in Plan C. In 2008, Taxpayer A borrowed Amount 1 from Plan C. Loan payments were withheld from his paychecks from 2008 to 2012. Taxpayer A's employment was terminated by Company B on February 28, 2012, shortly before Company B went into bankruptcy. Under the termination agreement, Taxpayer A continued to receive his salary and have his loan repayments withheld from his paychecks through June 2012.

After receiving his last paycheck, Taxpayer A spoke with a representative of Financial Institution D to request to continue paying off the loan by sending in payments or having payments deducted from his bank account. He was told he only had two options: (1) pay off the loan in its entirety and move the funds to another retirement plan or (2) leave the account where it was and do nothing. Taxpayer A chose to leave the account in Plan C. Taxpayer A represents he was not told that an automatic distribution would be made in the event that he did not pay off the loan in full by the end of the quarter.

On January 12, 2013, Taxpayer A received notification from Financial Institution D that his quarterly statement was available for viewing. Upon viewing his statement of his account in Plan C, Taxpayer A noticed a distribution of Amount 2, the balance of his 401(k) plan loan, dated December 14, 2012. Upon inquiry, Taxpayer A was told the loan was in default and distributed in accordance with the promissory note signed by Taxpayer A when the loan was made and could not be reversed. Taxpayer A represents he was never given a copy of the promissory note at the time the loan was made. Financial Institution D provided a copy of the promissory note on January 23, 2013.

On February 13, 2013, Taxpayer A rolled Amount 3, the remaining balance of his account in Plan C, to IRA E.

On March 13, 2013, at Taxpayer's request, Company B provided him a copy of Plan C's Summary Plan Description, which describes the consequences of a loan default and explains the 60-day rollover requirement.

Because Taxpayer A was terminated from employment with Company B prior to the time the Amount 2 was offset against his account in Plan C, a rollover of Amount 2 could have been made to an eligible retirement plan within 60 days of the date when the plan loan offset occurred.

Taxpayer A represents that he had the funds to pay off the loan at the time the loan amount was offset against his Plan C account or, in the alternative, had he known the offset amount was an eligible rollover distribution, he would have deposited the amount in an IRA within 60 days of the date when the plan loan offset occurred.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to the distribution of Amount 2.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An IRA constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distribution that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 1.402(c)-2, (Q&A-9(a), of the Income Tax Regulations ("Regulations") provides, in pertinent part, that a distribution of a plan loan offset amount, as defined in paragraph (b) of this Q&A, is an eligible rollover distribution if it satisfies Q&A-3 of this section. In general, Q&A-3 provides that unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee) from a qualified plan. Thus, an amount equal to the plan loan offset amount can be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period under section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason.

Section 1.402(c)-2, (Q&A-9(b), of the Regulations provides that, for purposes of section 402(c), a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing a plan loan, the participant's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in a participant's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, e.g., where the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 2 from Plan C within the 60-day period prescribed by section 402(c)(3) of the Code was due to his reliance on statements by Financial Institution D, the service provider for Plan C, which failed to inform him that he had received an eligible rollover distribution. The distribution of Amount 2 from Plan C made to Taxpayer A on account of his termination of employment was an eligible rollover distribution.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute not more than Amount 2 into an eligible retirement plan or rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 402(c)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (I.D.),
SE:T:EP:RA:T1, at () .

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter Ruling
Notice of Intention to Disclose, Notice 437

cc: